to prevent employment of a laborer is a *prima facie* tort,[8] unjustified by labor competition.[9] Apparently it would follow that an agreement which prevents employment is illegal. But it is believed that the general statement needs qualification, and that the decisions are best explained upon the principle that justification is withheld only where the competitive injuring pressure is applied through unwilling outsiders, and because of the interference with those third parties.[10] Consequently, a contract peaceably obtained with the outsider, in this case the employer, removes that objection. Obviously, fraud or force in obtaining the agreement would for a different reason render it unenforceable. Nor does it seem that the laborers' contract is against policy as a restraint of trade. From an economic standpoint a combination of rival laborers limits competition as truly as does a combination of rival merchants, but the courts now discriminate, and favor contracts between laborers, although they are intended to stifle competition and raise wages.[11] By analogy to the modern cases on restraint of trade,[12] public policy should not countenance such contracts when they afford more than a reasonable business protection to the parties, and when their result approaches monopoly; but until further decisions readjust the balance between the policy of unfettered contract and the abhorrence of monopoly, it appears that the common "union shop" contracts will be enforced.

EJECTMENT FOR ENCROACHMENTS ON LAND ABOVE THE SURFACE. — Although an action on the case for a nuisance is allowed both in England and in the United States for projections of parts of buildings over adjoining land,[1] the advantages of ejectment have led in this country to attempts to apply it to such situations. The cases, however, are so few and contradictory that there is still occasion for a reference to fundamental principles in the effort to work out a correct result. In legal contemplation land is regarded more as a solid or volume than as a surface, although its third dimension is necessarily indeterminate. As it may be divided vertically, so there may be horizontal divisions, and there may be an estate in the minerals underneath or in the upper story of a house without ownership of the surface. It is quite possible, therefore, that there should be several estates coextensive with the same lateral limits, and that different occupants should be in possession above the surface, on the surface, and below it. But as description of land in the ordinary form presumptively includes everything above and below the surface, so possession of the soil is presumed to extend up and down unless rebutted by the possession of another. For example, it has been held that where adequate adverse possession of the surface gave title to it, the title did not cover mines in operation underneath.[2]

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[8] Erdman *v.* Mitchell, 207 Pa. St. 79. See also "The Closed Market, the Union Shop, and the Common Law," by Wm. Draper Lewis, in 18 HARV. L. REV. 444, 451.

[9] Plant *v.* Woods, 176 Mass. 492.

[10] See 17 HARV. L. REV. 65.

[11] *Cf.* Commonwealth *v.* Hunt, 4 Met. (Mass.) 111. But see *contra*, People *v.* Fisher, 14 Wend. (N. Y.) 6, representing the earlier view.

[12] See Nordenfelt *v.* Maxim, etc., Co. (1894), A. C. 535.

[1] Fay *v.* Prentice, 14 L. J. C. P. (N. S.) 298; Codman *v.* Evans, 89 Mass. 431.

[2] Delaware and Hudson Canal Co. *v.* Hughes, 183 Pa. St. 66.

It would be surprising, therefore, if ejectment were restricted to ousters from the surface estate, and it has not been so restricted. From early times up to the present, ejectment has lain for the wrongful occupation of a mine [3] or of the upper story of a house.[4] What difference in principle is there in the case of projecting eaves, walls, bay-windows, and foundation stones?[5] The dispossession of the owner from a part of his land, though small, has been actual and permanent in its nature. The disseisor may not be personally present, but he has subjected the land to a purpose of his own to the exclusion of the owner.[6] The fact that the instrument of occupation does not rest on the soil is of no consequence. The upper stories of a great office building in New York have been built depending for their support on an adjoining building, yet they would seem to constitute an effectual occupation of the premises. There is no greater difficulty in the sheriff delivering possession than in the case of underground encroachments from neighboring land.

It seems hard to escape from the above considerations. The courts that refuse the action rest their decisions mainly on the apparent intangible nature of the invasion, which they regard as effecting not a loss of possession, but merely an injury to its exercise.[7] Some recent Wisconsin cases adopt the view that where the plaintiff has occupied to the line under the projecting eaves he has elected to treat the encroachment as a mere trespass.[8] This reasoning is evidently founded on the notion that an ouster, to be effective, must be from the whole of a vertical plane, including the surface, but the fallacy in thus mistaking a presumption for a necessity has already been shown. New York has vacillated, but the latest case on the question decides that ejectment will lie for a telephone wire strung without right over the plaintiff's premises. *Butler* v. *The Frontier Telephone Company*, 109 N. Y. App. Div. 217. A more extreme case within the principle could scarcely be imagined, but evidently no requisite is lacking. The defendant assumed continuous control of the wire, and used it for his own business purposes. It was not a dead wire abandoned on the premises, and control yielded up. On this distinction a different result might be reached in the case of overhanging branches of trees, for there in many instances the adjoining landowner makes no assumption of possession.[9]

ATTACHMENT OF GOODS FOR WHICH A NEGOTIABLE DOCUMENT OF TITLE IS OUTSTANDING. — At common law the title to goods in the possession of a bailee could not be transferred without attornment.[1] As that rule interfered with the freedom of commerce, bills of lading and warehouse receipts became, by the custom of merchants, representatives of the goods, and their

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[3] Comyn *v.* Kyneto, Cro. Jac. 150; Moragne *v.* Doe d. Moragne, 39 So. Rep. 161 (Ala.).

[4] Ford *v.* Lerke, Noy 109; Brady *v.* Kreuger, 8 S. Dak. 464.

[5] Sherry *v.* Frecking, 4 Duer (N. Y.) 452; Murphy *v.* Bolger Brothers, 60 Vt. 723. See McCourt *v.* Eckstein, 22 Wis. 153.

[6] *Cf.* Quicksilver Mining Co. *v.* Hicks, 4 Saw. (U. S. C. C.) 688.

[7] Aiken and Ketchum *v.* Benedict, 39 Barb. (N. Y.) 400. See Norwalk Heating and Lighting Co. *v.* Vernam, 75 Conn. 662.

[8] Rasch *v.* Noth, 99 Wis. 285.

[9] See further 14 HARV. L. REV. 291.

[1] Rich *v.* Alfred, 6 Mod. 216.